IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

Crl.MC.No. 1727 of 2004(A)

CC.1193/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA
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PETITIONER:
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1. OLAM EXPORTS INDIA LTD., REPRESENTED BY ITS DIRECT, AMIT KIRBATH, BISHOP JEROME NAGAR KOLLAM.

2. AMIT KIRBATH, M.C.NO.XXIX/1000/278 B OLAYIL, PALACE WARD, THEVALLY, KOLLAM.

BY ADV. SRI.S.SREEKUMAR
SRI.S.SUDHEESHKAR

RESPONDENTS: COMPLAINANT:
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1. N. RAMANKUTTY NAIR, PROPRIETOR, GANESH CASHEW COMPANY, KOTTARA, MIYANNUR P.O., KOTTARAKARA.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R1 BY ADV. SRI.T.M.CHANDRAN
R2 BY PUBLIC PROSECUTOR MR. PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30-1-2007, THE COURT on the SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NO.1727 of 2004

DATED THIS THE 30TH DAY OF JANUARY 2007

ORDER

The petitioners, who are the accused in C.C.No.1193/20003 in the file of the Judicial First Class magistrate Court-II,Kottarakkara with respect to the offences under Sections 403,406,417,418,420 read with Section 34 of the Indian Penal Code, have sought for setting aside the proceedings pending against them on various grounds. It is submitted that as per the complaint filed by the first respondent, the petitioners have collected the amounts due towards payment of dues to the Employees Provident Fund and that the petitioners did not pay the above amount and as a consequence the complainant was implicated in a criminal offence initiated by the statutory authority under Section 8A of the Employees Provident Fund and Miscellaneous Provisions Act vide S.T.No.493/2002 and the proceedings are pending. The amount liable to be paid towards contribution to the E.P.F.is Rs.4047/-. According to the

complainant, the petitioners had deducted a sum of Rs.13,071/- from the amount payable to the first respondent/complainant purportedly for remitting the contribution to the E.P.F. It is the case of the petitioners that as per the agreement in between the petitioners and the complainant the copy of which has been produced as Annexure-I, the liability to pay the E.P.F. contribution is cast on the complainant/first respondent and hence the entire proceedings initiated amounts to an abuse of process of the court. There can be no misappropriation, criminal breach of trust or cheating as alleged.

2. I find that in Annexure-I copy of the agreement ,of course, it is specified that the liability to remit the statutory contributions is on the complainant/second party therein. If considered exclusively on the basis of Annexure-I agreement, it can be said that the prosecution initiated is without any basis. But the case of the respondent/complainant is that the petitioners undertook to remit the statutory contributions and towards the amount due to the complainant/first respondent a sum of Rs.13,071/- was deducted and made him believe that the amount will be remitted in the Employees Provident Fund

organisation before 15-1-2000 but the same was not done and the amount was also not returned. Further the complainant/first respondent was implicated in a criminal case for non-payment of E.P.F.contribution of the employees vide S.T.No.493/2002. In the circumstances and in view of the specific averments in the complaint, I find that the decision on the matter would depend on the genuineness of the facts alleged which can be determined only by the trial court. Of course, the petitioners may apply for discharge at the appropriate stage. I find that the discretionary jurisdiction under Section 482 Cr.P.C. is not liable to be invoked in the present proceedings. The Crl.M.C.is dismissed.

Sd/-K.R.UDAYABHANU, JUDGE

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P.S.TO JUDGE